

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC**

In the Matter of)	
)	
Accessibility of User Interfaces, and Video)	MB Docket No. 12-108
Programming Guides and Menus)	
)	
)	

REPLY COMMENTS OF MOTOROLA SOLUTIONS, INC.

Motorola Solutions, Inc. (“Motorola Solutions”) hereby files Reply Comments in response to the proposed rules implementing sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”),¹ which require certain features and functions of digital apparatus designed to receive or play back video programming and navigation devices to be made accessible to individuals who are blind or visually disabled.²

Although the initial comments filed in this proceeding raise a number of thoughtful and important issues regarding the proper interpretation of sections 204 and 205, Motorola Solutions respectfully urges the Commission to clarify in whatever final rules are ultimately adopted that such rules do not apply to public safety and enterprise devices.³ Such clarification is consistent

¹ Pub. L. No. 111-260, 124 Stat. 2751 (2010).

² *Accessibility of User Interfaces, and Video Programming Guides and Menus*, Notice of Proposed Rulemaking, 28 FCC Rcd 8506 (2013) (“*Notice*”).

³ Authorized under Part 90 of the Commission’s rules, public safety and enterprise devices operate primarily on Private Land Mobile Radio systems, which are operated and maintained by: (i) local public safety agencies in support of law enforcement, fire-fighting, and emergency medical services; and (ii) private businesses, critical infrastructure industries, local governments, and other enterprise organizations to meet a wide range of communication requirements, including the coordination of people and materials, important safety and security needs, and quick response in times of emergency. Some, but not all, public safety and enterprise devices are equipped with the ability to also operate on commercial mobile radio networks – functionality that is provided for redundancy – and wireless Internet access to support the core mission of the

with the context and plain language of sections 204 and 205, which are intended to encompass digital apparatus and navigation devices provided to individual consumers. Nothing in sections 204 or 205 – or anywhere else in the CVAA for that matter – evidences Congressional intent to subject public safety or enterprise devices to accessibility requirements.⁴

To be sure, a public safety and enterprise device may have the ancillary ability to receive and play back video, and there are important public safety reasons for providing this capability. For example, a police officer might need to utilize a device to review surveillance or other video in the course of an investigation. Alternatively, a utility worker or enterprise employee might access training videos through an online streaming service. However, such video displays do not and should not subject public safety and enterprise devices to sections 204 and 205 or the Commission’s implementing rules.

Imposing new accessibility obligations on public safety and enterprise devices would add unnecessary cost and complexity without any corresponding public benefits. Indeed, the application of sections 204 and 205 to public safety and enterprise devices could undermine the

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enterprise or organization. The Commission consistently has addressed public safety and general enterprise communications networks and devices together with respect to disability access obligations. *See, e.g.*, 47 C.F.R. § 20.19(a)(1) (limiting hearing aid compatibility obligations to “digital CMRS”); *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, WT Docket No. 07-250, Policy Statement and Second Report and Order and Further Notice of Proposed Rulemaking, 25 FCC Rcd 11167, ¶ 82 (2010) (“*2010 HAC Order*”) (proposing to exempt public safety and dispatch equipment from HAC rules); *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 14557, ¶¶ 171-172 (2011) (“*2011 ACS Order*”) (exempting both public safety and enterprise equipment from the Section 716 ACS rules).

⁴ Motorola Solutions has filed a petition seeking similar relief from applying the Commission’s rules implementing CVAA Section 718, which governs mobile device Internet browsers, to public safety and enterprise devices. *See* Petition for Partial Reconsideration and Clarification of Motorola Solutions, Inc., CG Docket 10-213 (filed June 21, 2013) (“Section 718 Petition”).

important missions of the first responders and other personnel who rely upon such devices in discharging their duties. Above all, public safety and enterprise devices must be reliable and easy to use. No matter how well intended, building in additional menus, functionality, or design elements—such as a button or icon for launching accessibility features—could detract from the simplicity or responsiveness of the devices.⁵

The Commission also should be reluctant to impose new accessibility obligations on public safety and enterprise devices given the work of the First Responder Network Authority (“FirstNet”), which is tasked with establishing a single nationwide, interoperable public safety broadband network.⁶ FirstNet is currently examining alternatives for designing that network, which will include evaluating the features and functionality that should be incorporated in compatible public safety devices.⁷ New interface features or technical functionalities likely would need to be considered by FirstNet in the context of making interoperability determinations in order to ensure a consistent user experience across different devices. The Commission should not inadvertently raise the cost of deploying the nationwide public safety broadband network or otherwise complicate FirstNet’s deployment activities by imposing new accessibility mandates on public safety and enterprise devices.

⁵ The Commission previously has recognized the unique attributes of public safety and enterprise networks and equipment in declining to impose general disability access requirements. *See, e.g. 2010 HAC Order*, 25 FCC Rcd 11167, ¶ 82 (proposing not to apply hearing aid compatibility requirements to “public safety and dispatch networks” because the burdens of compliance “would outweigh the public benefits,” given that such communications networks have different technical, operational, and economic demands than consumer networks).

⁶ *See* The Middle Class Tax Relief and Job Creation Act of 2012 (Act), Public Law 112-96, 126 Stat. 156 (2012).

⁷ *See* Press Release, *FirstNet Issues RFIs on Technology for Nationwide Wireless Broadband Network* (July 10, 2013), available at <http://www.ntia.doc.gov/press-release/2013/firstnet-issues-rfis-technology-nationwide-wireless-broadband-network>.

It is a “fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.”⁸ Thus, in interpreting the scope of sections 204 and 205, the Commission must interpret these provisions “as a symmetrical and coherent regulatory scheme,” and “fit, if possible, all parts into an harmonious whole.”⁹

Here, the context of the CVAA generally and sections 204 and 205 specifically make clear that Congress was concerned about apparatus and navigation devices provided to blind or visually disabled “consumers” —a point on which commenters uniformly agree.¹⁰ A “consumer” is generally understood to be an individual.¹¹ Public safety and enterprise devices

⁸ *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989); *see also Francis v. Booz, Allen & Hamilton, Inc.*, 452 F.3d 299, 303 (4th Cir. 2006) (“The first step in determining the meaning of a statute is to examine the statute’s plain language. In doing so, [a court] look[s] at ‘the language itself, the specific context in which that language is used, and the broader context of the statute as a whole’”); *see also Notice* ¶ 17 (recognizing “the tenet of statutory construction that requires statutory language be read in the context of the larger statutory scheme”).

⁹ *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 128 (2000) (internal citations omitted); *see also Kofa v. INS*, 60 F.3d 1084, 1088 (4th Cir. 1995) (en banc) (recognizing “two principles of statutory construction: plain English and common sense”).

¹⁰ *See, e.g.*, Comments of the American Council of the Blind, MB Docket No. 12-108, at 7 (filed July 15, 2013) (“... we firmly believe that any equipment provided to consumers, no matter who the manufacturer is, must be accessible”); Comments of Verizon and Verizon Wireless, MB Docket No. 12-108, at ii (filed July 15, 2013) (noting Congress’s intent in sections 204 and 205 to make digital apparatus and navigation devices “accessible to blind and visually-impaired consumers ...”) (“Verizon Comments”); Comments of the Telecommunications Industry Association, MB Docket No. 12-108, at 8 (filed July 15, 2013); Comments of Rovi Corporation, MB Docket No. 12-108, at 3-5 (filed July 15, 2013).

¹¹ *See, e.g.*, Amendment of Parts 1, 2, 22, 24, 27, 90 and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters, Report and Order, 28 FCC Rcd 1663 (2013) (defining “Consumer Signal Boosters” as devices that are marketed to and sold for personal use by individuals); 47 C.F.R. §§ 54.400(a), 54.409(c) (definition of “qualifying low-income consumer” for Lifeline purposes); News Release, Quarterly Report of Consumer Inquires and Informal Complaints for Fourth Quarter of Calendar Year 2012 Released (May 9, 2013) (defining a “consumer inquiry” as “correspondence or communications received by the Commission from or on behalf of an individual seeking information regarding a matter under the

are not provided to individuals. Rather, they are marketed and sold, either directly or indirectly, to state or local governments, public safety organizations, or other enterprise customers. These entities cannot reasonably be considered “consumers.”

The plain language of sections 204 or 205 underscores that these statutory provisions were not intended to reach public safety and enterprise devices.¹² Section 204 applies to digital apparatus that are “designed to receive or play back video programming.”¹³ Video programming is defined by the CVAA as “programming by, or generally considered comparable to programming provided by a television broadcast station but not including consumer-generated media.”¹⁴ While some public safety and enterprise devices may include wireless Internet capability that would enable the user to play back some “video programming,” this is largely ancillary to their mission-related functionality. The display of video programming clearly is not something public safety and enterprise devices are “designed to” do.

Although the Commission interpreted the phrase “designed to” broadly in the closed captioning context, it did so because “[f]rom a consumer perspective, it would . . . be reasonable

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FCC’s jurisdiction”); *see also* 11 U.S.C. § 101(8) (defining the term “consumer debt” to mean “debt incurred by an individual primarily for a personal, family, or household purpose”); 15 U.S.C. § 1681a(c) (“The term ‘consumer’ means an individual”).

¹² Motorola Solutions recognizes that many commenters offered alternative views to the Commission’s proposed reading of the interplay between section 204 and section 205. *See, e.g.*, Comments of AT&T, MB Docket No. 12-108, at 4-8 (filed July 15, 2013) (“AT&T Comments”); Verizon Comments at 2-5. Motorola Solutions takes no position on this issue, and, regardless of how it is resolved, public safety and enterprise devices should not be subject to the requirements of either section 204 or section 205.

¹³ CVAA § 204; 47 U.S.C. § 303(aa)(1).

¹⁴ 47 U.S.C. § 613(h)(2).

to expect” this functionality from devices capable of playing back video programming.¹⁵

Regardless of whether this logic extends to section 204,¹⁶ the “consumer perspective” is irrelevant to public safety and enterprise devices that are not provided to “consumers.”

Therefore, even under the Commission’s broad reading of the CVAA, public safety and enterprise devices are not “designed to” play back video programming within the meaning of section 204.¹⁷

The plain language of section 205 likewise makes clear that public safety and enterprise devices are not encompassed within that statute’s scope. Section 205 applies to navigation devices, which the Commission has defined as “[d]evices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.”¹⁸ According to the Commission, “televisions, personal computers, cable modems, and VCRs all fall under the Commission’s navigation devices definition.”¹⁹ None of the equipment identified

¹⁵ See *Closed Captioning of Internet Protocol-Delivered Video Programming: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report and Order, 27 FCC Rcd 787, ¶ 95 (2012) (“*IP Closed Captioning Order*”).

¹⁶ Notice ¶ 29.

¹⁷ See, e.g., Verizon Comments at 6 (“Section 204 should only apply to devices that are marketed with and for the capability to receive and play back video programming, rather than any of the wide range of other digital devices which can be configured by the consumer post-purchase to access video programming”); Comments of the Information Technology Industry Council, MB Docket No. 12-108, at 3 (filed July 15, 2013) (noting that “for some devices, such as personal computers, tablets and smartphones, the device manufacturer has no control over capabilities that may be added by a user by modifying or adding software or hardware to the device”); Comments of the Panasonic Corporation of North America, MB Docket No. 12-108, at 5 (filed July 15, 2013) (“The Commission should acknowledge that a manufacturer’s design intent as a factor in determining the scope of devices covered by Section 204 ...”).

¹⁸ 47 C.F.R. § 76.1200(c).

¹⁹ Notice ¶ 15.

by the Commission as “navigation devices” is remotely comparable to the public safety and enterprise devices at issue here.

The essential requirement of a “navigation device” is its intended use to display “multichannel video programming.”²⁰ As stated above, the Commission has defined video programming as “[p]rogramming provided by, or generally considered comparable to programming provided by, a television broadcast station that is distributed and exhibited for residential use.”²¹ In contrast to a television or set-top box, public safety devices are intended to facilitate mission-related communications, not display “video programming.”

Even to the extent the Commission were to conclude that public safety and enterprise devices are either digital apparatus or navigation devices covered by sections 204 or 205, the Commission has ample legal authority to exempt such devices from any new rules. Sections 204 and 205 of the CVAA amend section 303 of the Communications Act.²² Although the CVAA requires the Commission to adopt implementing regulations within specified timeframes, section 303 directs the Commission to require accessibility for digital apparatus and navigation devices only insofar “as public convenience, interest, or necessity requires.”²³ Because public safety and enterprise devices are not consumer devices and because imposing new accessibility

²⁰ CVAA § 205; 47 U.S.C. § 303(bb)(1) (applying only to “...on-screen text menus and guides provided by navigation devices... for the display or selection of multichannel video programming ...”).

²¹ 47 C.F.R. § 79.1(a)(1); *see also* 47 C.F.R. § 76.1000(e) (defining “multichannel video programming distributor” to include any “entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming,” including, but not limited to, “a cable operator, a BRS/EBS provider, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities”).

²² CVAA §§ 204, 205; *see also* 47 U.S.C. § 303(aa)—(bb).

²³ 47 U.S.C. § 303.

obligations could add unnecessary cost and complexity with little corresponding public benefit, the Commission would be justified in concluding that the public convenience, interest, or necessity does not require subjecting public safety and enterprise devices to the requirements of sections 204 or 205.²⁴

For the foregoing reasons, the Commission should make clear in any final rules implementing sections 204 and 205 that such rules do not extend to public safety and enterprise devices.

Respectfully submitted,

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²⁴ Declining to extend section 204 and section 205 rules to public safety and enterprise devices would be consistent with the Commission's general implementation of the CVAA. For example, the Commission recently concluded in the Advanced Communications Services context that the new Section 716 rules should exempt business and other enterprise users, as well as "public safety communications networks and devices, because such networks and devices are 'equipment and services that are not offered directly to the public.'" *2011 ACS Order*, 26 FCC Rcd 14557, ¶¶ 171-172.